

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 969 of 1983

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

BHIKHABHAI M NAI

Versus

JAYABEN WD/O SHANTILAL SHAH

Appearance:

MR CB DASTOOR for Petitioner

MR MC BAROT for Respondent No. 1, 2, 3, 4, 5, 6

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 03/07/2000

ORAL JUDGEMENT

1. This is a revision under section 29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 at the instance of the original defendant tenant, who was sued by the respondents-plaintiffs-landlords for a decree of eviction under the provisions of the Bombay Rent Act.

2. The grounds on which the decree was sought by the landlords was that the tenant was guilty of illegal subletting of the premises, that the landlords reasonably and bonafide required the suit premises for occupation by themselves, and that the tenant was in arrears of rent for more than six months and had failed and neglected to pay the same within 30 days of the statutory notice.

3. The trial court dismissed the suit of the landlords on all the three grounds. The landlords, therefore, preferred an appeal under section 29(1) of the Bombay Rent Act. The lower appellate court confirmed the dismissal of the suit as recorded by the trial court, on the alleged ground of illegal subletting i.e. the lower appellate court found that the landlords had failed to establish that the tenant was guilty of illegal subletting.

3.1 The ground of personal and bonafide requirements of the landlords were not pressed before the lower appellate court. Thus, the only question that remained for the lower appellate court to consider was the question of arrears of rent, which was found in favour of the landlord, and hence this Revision.

4. Only a few salient features require to be discussed.

5. The landlords had given the statutory notice to the tenant on 31st October 1976 at Exh.32. According to the said notice, the tenant was in arrears of rent from 1st January 1976 onwards, i.e. he was in arrears for a period of more than six months on the date of the notice. In fact the second notice was also given to the defendants on 12th August 1977, at Exh.29. On the date of the second notice the tenant was in arrears of rent for a period of 19 months.

5.1 The lower appellate court has noted that the evidence on record indicates that the tenant had sent rent of Rs.48/- to the plaintiffs by money order in April 1976 (for the period from 1st January 1976 to 30th April 1976), which money order was refused by the landlords (Exh.44 and 45).

5.2 Similarly another money order sent by the tenant in June 1976, for the period from 1st January 1976 till 30th June 1976, was also returned by the landlords (Exh.46 and 47). However, what requires to be noted is that both these refusals on the part of the landlords are prior to the suit notice.

6. There is no controversy that the suit notice Exh.32 and 29 dated 31st October 1976 and 12th August 1977, were not complied with, and that the tenant first made the deposit in court (after the filing of the suit) on 5th November 1977. It must be noted that the second notice at Exh.29 is dated 12th August 1977, and on that date the defendant was clearly in arrears for a period of 17 months from January 1976 to July 1977 and even if the period from January 1976 to June 1976 is excluded, the tenant would still be in arrears of rent for a period of 13 months (from 1st July 1976 to 31st July 1977).

7. It is an admitted fact on the record of the case that the tenant has not made any attempt to pay up these arrears within one month of the service of the suit notice.

8. It is also undisputed that the tenancy of the defendant was a monthly tenancy and that the rent was payable by the month. The fact that the tenant has raised a dispute as to standard rent is of no consequence inasmuch as this dispute has been raised as part of the his written statement before the trial court. This, therefore, is of no consequence and would not take the case out of the operation of section 12(3)(a) of the said Act.

9. The lower appellate court was, therefore, justified in concluding that firstly the trial court has concentrated only on the earlier notice (Exh.32) and has completely ignored the second notice at Exh.29. The lower appellate court was also justified in concluding that on the facts of the case the provisions of section 12(3)(a) would apply, and since admittedly no payment or deposit had been made by the tenant within 30 days of the statutory notice, the tenant would lose the protection of the Rent Act and the landlord would be entitled to a decree for eviction.

10. The lower appellate court has also considered, in the alternative, on a hypothetical basis, the provisions of section 12(3)(b) of the Bombay Rent act. Even here the finding of fact recorded is that the tenant has not deposited in court the amount of rent regularly. The dates of the deposits, etc. have been discussed in paragraphs 14 and 15 of the lower appellate court's judgement, whereby it is found that the amounts deposited are irregular, at intervals of many months, and in one instance the gap is more than one year. Thus, even if a liberal view were taken of the matter and the provisions

of section 12(3)(b) were made applicable, the tenant has clearly failed to make regular payments in court, and therefore, has ceased to be entitled to the protection of the Rent Act. Under the circumstances the judgement and decree passed by the lower appellate court cannot be faulted in any manner whatsoever and requires to be confirmed.

11. As a result of the above discussion I find that there is no substance in the present revision and the same is accordingly dismissed. Rule is discharged with no order as to costs. Interim relief stands vacated.

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